

After reviewing the record and hearing the arguments of the parties, the Appeals Board finds that the decision by the Administrative Law Judge should be reversed. Claimant testified that on February 3, 1995 a two by twelve (2x12) board fell from scaffolding and struck claimant in the shoulder. Claimant reported to the emergency room on February 7, 1995 and gave a consistent history. Specifically, the emergency room record states that he was injured four (4) days ago when a board fell striking him on top of the shoulder. The initial diagnosis was left shoulder contusion and left arm and hand

paraesthesia. Claimant was referred to Dr. Fullen for follow-up evaluation. When claimant saw Dr. Fullen on February 10, 1995 he gave, again, a consistent history. Although some of what Martin Sheridan stated in his deposition tends to contradict the testimony given by claimant, the Appeals Board finds claimant has met his burden for purposes of preliminary hearing and has shown accidental injury arising out of and in the course of his employment.

Because the Administrative Law Judge found no accidental injury arising out of employment, he made no finding relating to the need for temporary total disability and medical benefits. He also made no finding regarding which of the various respondents should be obligated to pay or provide benefits. This case is, therefore, remanded to the Administrative Law Judge for findings on those issues.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the decision by the Administrative Law Judge finding that the claimant has not sustained his burden of showing accidental injury arising out of and in the course of his employment should be, and the same is hereby, reversed. The claim is otherwise remanded for finding regarding need for temporary total disability and medical benefits and findings regarding which of the various respondents is obligated to provide those benefits.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully dissent from the opinion of the majority in the above matter. K.S.A. 44-501 and K.S.A. 44-508(g) make it the claimant's burden of proof to prove by a preponderance of the credible evidence his entitlement to benefits. In this case, claimant's testimony is contradicted by his own comments regarding not only the date of injury but also his ongoing symptomatology. This coupled with claimant's past history of dishonesty including a multitude of prior convictions for felonies including burglaries, attempted theft and forgeries raises serious question regarding claimant's honesty and veracity. Claimant's admitted narcotics abuse also raises questions regarding the believability of claimant's allegations.

The Administrative Law Judge had the opportunity to view claimant and assess first hand claimant's credibility. In that regard, this member of the Appeals Board feels the Administrative Law Judge's opinion would carry significant weight.

A review of the evidence indicates claimant has not proven by a preponderance of the credible evidence his entitlement to benefits having failed to prove accidental injury arising out of and in the course of his employment. I would respectfully submit the decision of the Administrative Law Judge should be affirmed.

BOARD MEMBER

c: John M. Ostrowski, Topeka, Kansas
Scott Price, Salina, Kansas
Roger Struble, Salina, Kansas
Jeffrey E. King, Salina, Kansas
Norman R. Kelly, Salina, Kansas
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director